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Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 8, Original.

THE STATE OF SOUTH DAKOTA, COMPLAINANT,

v.

THE STATE OF NORTH CAROLINA ET AL.

LAWS OF NORTH CAROLINA, SUBMITTED BY THE DEFENDANT, THE STATE OF NORTH CAROLINA.

CHAPTER X.

AN ACT to regulate the form of bonds issued by the State.

SEC. 1. *Be it enacted by the General Assembly of the State of North Carolina*, and it is hereby enacted by the authority of the same, That all certificates hereafter to be issued for any money to be borrowed for the State by virtue of any act now in force, authorizing the same, or of any act which may be hereafter passed for that purpose, shall be signed by the governor and countersigned by the public treasurer, and sealed with the great seal of the State,

and shall be made payable to —— or bearer, and the principal shall be made payable by the State, at a day named in the certificate or bond. And coupons of interest, in such form as may be prescribed by the public treasurer, and to be attached to the certificate, and the certificates and coupons attached thereto, shall be made payable at such bank or place in the city of New York, as he, the public treasurer, may think proper, or at the office of the public treasury at Raleigh, if preferred by the purchaser: *Provided, however,* That no such certificate shall be issued for a less sum than one thousand dollars, and no certificate shall be sold for a less sum than par value.

SEC. 2. *Be it further enacted,* That it shall be the duty of the public treasurer to enter in a book, to be kept for that purpose, a memorandum of such bond or certificate, issued by virtue of this act, the numbers, date of issue, when and where payable, to whom issued, or to whom sold, and at what premium, if any, the same was sold by him.

SEC. 3. *Be it further enacted,* That the bonds or certificates hereafter issued by the State shall not be subject to taxation, and that all laws and clauses of laws coming in conflict with this provision are hereby repealed.

SEC. 4. *Be it further enacted,* That it shall be the duty of the public treasurer to adopt such measures in regard to appropriations made, as may be necessary to receive* the prompt payment of the amount of all coupons as they may become due, and sustain the credit of the State.

SEC. 5. *Be it further enacted,* That this act shall be in force from and after its ratification.

(Read three times and ratified in General Assembly, this 22d day of December, A. D., 1852.)

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* It was no doubt intended that this sentence should read "as may be necessary to *secure* the prompt payment."—PUB. PRINTER.

Chapter 35:

PUBLIC DEBT.

An act concerning public debt.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, as follows:

1. That the bonds of the State for five hundred thousand dollars, issued under the authority of the act of the General Assembly of the year eighteen hundred and forty-six, entitled "An act to provide for the transfer of the bonds of the Raleigh and Gaston Railroad Company, endorsed by the State," and payable on the first day of January, eighteen hundred and sixty: the "certificates of debt" issued on behalf of the State for the sum of two hundred thousand dollars, under the authority of the act of the General Assembly of the year eighteen hundred and forty-eight, entitled "An act to provide for the payment of the debt of the State to the Bank of Cape Fear, to the Bank of the State, and other debts due on account of endorsement by the State for the Raleigh and Gaston railroad," and payable at the end of ten years from the date of the issue of said certificates, respectively: the "certificates of debt" of one hundred and twenty thousand dollars, issued under the authority of the act of the General Assembly of the year 1848, entitled "An act to incorporate the Fayetteville and Western Plank Road Company," and payable at the end of twenty years from the date of the issue: the "certificates of debt" already issued, and which may be issued, for two millions of dollars, under the authority of the act of the General Assembly of the year 1848, entitled "An act to incorporate the North Carolina Railroad Company," and payable at the end of thirty years from the date of their issue: the "certificates of debt" for two hundred thousand dollars, issued under the authority of the

act of the General Assembly of the year 1850, entitled "An act to provide for the payment of the debt of the State," and payable in like time: and all other bonds and "certificates of debt," issued by and in the name of the State, or which may hereafter be issued by the authority of any statute now or hereafter to be enacted shall be duly registered by the public treasurer, in a book to be kept by him for that purpose.

2. All bonds or certificates of debt of the State, which now or hereafter may be issued on behalf of the State, shall be transferable: such as are payable to bearer by delivery, and such as are payable to the holder by name alone, may be transferred by the holder, or by his agent, in a book to be kept for that purpose by the public treasurer, on surrendering for cancellation the outstanding bond or certificate; and in this latter case of transfer, a new bond or certificate for the same amount shall be issued.

3. All bonds or certificates of debt of the State, hereafter to be issued as originals, or as substitutes for such as may be surrendered for transfer, by virtue of any act now or to be hereafter passed, shall be signed by the governor, and countersigned by the public treasurer, and sealed with the great seal of the State, and shall be made payable to such person by name as may be the purchaser, or to bearer; and the principal shall be made payable by the State, at a day named in the bond or certificate. And coupons of interest, in such form as may be prescribed by the public treasurer, shall be attached to the certificate, and the certificates and coupons attached thereto, shall be made payable at such bank or place in the city of New York, as the public treasurer may designate, or at the office of the public treasurer at at Raleigh, if preferred by the purchaser: *Provided, however,* That if the purchaser or holder so may desire, the bond or certificate shall be payable to him alone, and not to bearer: *And provided further,* That no certificate shall issue for a less sum than one thousand dollars, unless the same be issued

for a surrendered bond of less amount: nor shall any original bond or certificate of debt of the State be sold for a sum less than par value: nor shall any such bond or certificate, issuing in lieu of a transferred bond or certificate, be payable elsewhere than may be the original, except by the consent of the holder, it may be made payable at the public treasury.

4. The public treasurer shall enter, in a book to be kept for that purpose, a memorandum of every bond, or certificate of debt of the State, issued or to be issued by the State, under any act whatever, together with the numbers, dates of issue, when and where payable, at what premium, and to whom the same may have been sold or issued.

5. The original bonds, or certificates of debt of the State, which have been issued since the first day of January, eighteen hundred and fifty-three, or which may hereafter be issued, under the authority of any act whatever, as likewise the bonds and certificates substituted for such original bonds and certificates, shall be, they and the interest accruing thereon, exempt from taxation.

6. Guardians, executors and other persons, holding funds in trust to be invested and kept on interest, may, unless prohibited, invest the same in bonds or certificates of debt of the State, or in any securities for the payment whereof the State is responsible, now or hereafter to be issued; and in all settlements they shall be deemed cash, and may be paid as such by transfer thereof to the persons entitled.

7. In every bond or certificate of debt issued by the State, and in the body thereof, shall be set forth the title of the act, with the year of its enactment, under the authority of which the same may be issued, or reference thereto shall be made by the number of the chapter, and the year of the legislative session.

(Ratified the 24th day of January, 1855.)

This chapter is re-enacted by the Revised Code of North Carolina 1856, chapter 96, and brought forward in successive revisions and now forms a part of the present code, chapter 49, volume 2.

CHAPTER THREE.

ACTIONS OTHER THAN FOR THE RECOVERY OF REAL PROPERTY—TIME OF COMMENCING.

SEC. 151. Periods of limitation prescribed (C. C. P., s. 30).

The periods prescribed for the commencement of actions, other than for the recovery of real property, shall be as follows:

SEC. 152. Ten years (C. C. P., ss. 14, 31).

Within ten years—

(1.) An action upon a judgment, or decree of any court of this State, or of the United States, or of any State or Territory thereof, from the date of the rendition of said judgment or decree. But no such action shall be brought more than once nor have the effect to continue the lien of the original judgment:

Broyles *v.* Young, 81–315; Pasour *v.* Rhyne, 82–149; Welfare *v.* Thompson, 83–276; McClenahan *v.* Cotten, 83–332; Lyon *v.* Russ, 84–588; Warren *v.* Warren, 84–614; Goodman *v.* Litaker, 85–8; Fox *v.* Kline, 85–173; McDonald *v.* Dickson, 85–248; Cotten *v.* McClenahan, 85–254; Kendall *v.* Bailey, 86–56: Williams *v.* Mullis, 87–159; Johnston *v.* Jones, 87–393; McDonald *v.* Dickson, 87–404.

(2.) An action upon a sealed instrument against the principal thereto:

Welfare *v.* Thompson, 83–276; Belo *v.* Spach, 85–122; Torrence *v.* Alexander, 85–143; Crawford *v.* McClellan, 85–169.

(3.) An action for the foreclosure of a mortgage, or deed in trust for creditors with a power of sale, of real property, where the mortgagor or grantor has been in possession of the property, within ten years after the forfeiture of the mortgage, or after the power of sale became absolute, or within ten years after the last payment on the same:

Parker *v.* Banks, 79–480.

(4.) An action for the redemption of a mortgage, where the mortgagee has been in possession, or for a residuary interest under a deed in trust for creditors, where the trustee or those holding under him shall have been in possession; within ten years after the right of action accrued:

Edwards *v.* Tipton, 85–478.

SEC. 153. Seven years (C. C. P., s. 32).

Within seven years—

(1.) An action on a judgment rendered by a justice of the peace, from the date thereof:

Barringer *v.* Allison, 78–79; Broyles *v.* Young, 81–315; Daniel *v.* Laughlin, 87–433.

(2.) By any creditor of a deceased person against his personal or real representative, within seven years next after the qualification of the executor or administrator and his making the advertisement required by law, for creditors of the deceased to present their claims, where no personal service of such notice in writing is made upon the creditor; and a creditor thus barred of a recovery against the representative of any principal debtor shall also be barred of a recovery against any surety to such debt:

McKeithan *v.* McGill, 83–517; Cox *v.* Cox, 84–138; Bacon *v.* Berry, 85–124; Vaughan *v.* Hines, 87–445; Leake *v.* Covington, 87–501.

SEC. 154. Six years (C. C. P., s. 33).

Within six years—

(1.) An action upon the official bond of any public officer: Hewlett *v.* Schenck, 82–234; Hughes *v.* Newsom, 86–424.

(2.) An action against any executor, administrator, collector, or guardian on his official bond, within six years after the auditing of his final accounts by the proper officer, and the filing of such audited accounts as required by law:

Briggs *v.* Smith, 83–306; Vaughan *v.* Hines, 87–445.

(3.) An action for injury to any incorporeal hereditament: Boyden *v.* Achenbach, 79–539.

SEC. 155. Three years (C. C. P., s. 34).

Within three years—

(1.) An action upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections:

R. R. Co. *v.* Avery, 64–491; Knight *v.* Braswell, 70–709; Guano Co. *v.* Willard, 73–521; Blackwell *v.* Claywell, 75–215; Austin *v.* Dawson, 75–523; Egerton *v.* Logan, 81–172; Hewlett *v.* Schenck, 82–234; Welfare *v.* Thompson, 83–273; Green *v.* College, 83–449; Capell *v.* Long, 84–17; Reed *v.* Exum, 84–130; Oates *v.* Lilly, 84–643; Timberlake *v.* Green, 84–658; Miller *v.* Lash, 85–51; Torrence *v.* Alexander, 85–143; Jolly *v.* Bryan, 86–457; Moore *v.* Com'rs, 87–209; Robertson *v.* Dunn, 87–191.

(2.) An action upon a liability created by statute, other than a penalty or forfeiture, unless some other time be mentioned in the statute creating it.

(3.) An action for trespass upon real property:

Spilman *v.* Roanoke Nav. Co., 74–675; King *v.* Little, 77–138.

(4.) An action for taking, detaining, converting or injuring any goods or chattels, including action for their specific recovery:

Hewlett *v.* Schenck, 82–324; Etheridge *v.* Woodley, 83–11; Currie *v.* McNeill, 83–176.

(5.) An action for criminal conversation, or for any other injury to the person or rights of another, not arising on contract and not hereinafter enumerated.

(6.) An action against the sureties of any executor, administrator, collector or guardian, on the official bond of their principal; within three years after the breach thereof complained of:

Bushee *v.* Surles, 77–62; Spruill *v.* Sanderson, 79–466; Walton *v.* Pearson, 85–34.

(7.) An action against bail; within three years after judgment against the principal, but bail may discharge himself by a surrender of the principal, at any time before final judgment against the bail.

(8.) Fees due to any clerk, sheriff or other officer, by the judgment of a court; within three years from the time of the judgment rendered, or of the issuing of the last execution therefor.

1879, c. 251.

(9.) An action for relief, on the ground of fraud or mistake, in cases which heretofore were solely cognizable by courts of equity, the cause of action in such cases not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting such fraud or mistake:

Young *v.* Phifer, 72–529; Barham *v.* Lomax, 73–76; Ross *v.* Henderson, 77–170; Wilson *v.* Land Co., 77–445; Blount *v.* Parker, 78–128; Kahnweiler *v.* Anderson, 78–133; Spruill *v.* Sanderson, 79–466; Egerton *v.* Logan, 81–172; Briggs *v.* Smith, 83–306; Day *v.* Day, 84–408; Hughes *v.* Whitaker, 84–640; Knight *v.* Houghtalling, 85–17.

SEC. 156. One year (C. C. P., s. 35).

Within one year—

(1.) An action against a sheriff, coroner or constable, or other public officer, for a trespass under color of his office:

Hewlett *v.* Nutt, 79–263.

(2.) An action upon a statute, for a penalty or forfeiture, where the action is given to the State alone, or in whole or in part to the party aggrieved, or to a common informer, except where the statute imposing it prescribes a different limitation:

Hewlett *v.* Nutt, 79–263.

(3.) An action for libel, assault, battery or false imprisonment.

(4.) An action against a sheriff, or other officer, for the escape of a prisoner arrested or imprisoned on civil process.

(5.) An action by a creditor of any deceased person, on whom personal notice in writing, to present his claim to the personal representative of the deceased, has been served, and who has failed so to do, within one year after the service of such notice; and any such creditor, barred of a recovery against the personal representative of a principal debtor, by reason of such default, shall also be barred of a recovery against the surety for such debt.

SEC. 157. Six months (C. C. P., s. 36).

Within six months—

An action for slander.

SEC. 158. For other relief within ten years (C. C. P., s. 37).

An action for relief not herein provided for must be commenced within ten years after the cause of action shall have accrued:

Libbett *v.* Maultsby, 71–345.

Ross *v.* Henderson, 77–170.

McDonald *v.* Dickson, 85–248.

SEC. 159. Limitations to apply to actions by the State (C. C. P., s. 38).

The limitations prescribed in this chapter shall apply to civil actions brought in the name of the State, or for its benefit, in the same manner as to actions by or for the benefit of private parties.

SEC. 160. Actions upon an account current, when cause accrues (C. C. P., s. 39).

In an action brought to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the latest item proved in the account, on either side:

Robertson *v.* Pickerell, 77–302; Mauney *v.* Coit, 86–463.